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Armida Derzakarian

*Loyola Law School, Los Angeles*

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# THE DARK SIDE OF SOCIAL MEDIA ROMANCE: CIVIL RECOURSE FOR CATFISH VICTIMS

*Armida Derzakarian\**

## I. INTRODUCTION

The rapid proliferation of social media and online interactions has revolutionized the way users create and exchange content, but this emergence has also opened new avenues for deception.<sup>1</sup> This dark side of social networking is particularly prominent in the context of online dating,<sup>2</sup> where many fall prey to fraudulent personas. The term “catfish” has been popularly used to refer to those who use the cloak of technology to fabricate online personas and lure victims into romantic relationships.<sup>3</sup> The term originates from a 2010 documentary that chronicles a twenty-four-year-old New York City man who is lured into an online relationship with a woman who he believes to be an attractive nineteen-year-old girl.<sup>4</sup> During his journey, the man discovers the devastating reality that he has been deceived.<sup>5</sup> The catfish phenomenon also reached media headlines when Notre Dame linebacker Manti Te’o revealed he had been a victim of an online hoax.<sup>6</sup> Te’o’s infamous story first grasped media attention when he revealed that his girlfriend had tragically

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1. See Michail Tsikerdekis & Sherali Zeadally, *Online Deception in Social Media*, 57 COMM. ACM 72 (2014).

2. See Erik Brady & Rachel George, *Manti Te’o’s ‘Catfish’ Story Is a Common One*, USA TODAY (Jan. 18, 2013, 11:17 AM), <http://www.usatoday.com/story/sports/ncaaf/2013/01/17/manti-teos-catfish-story-common/1566438>.

3. See Ellen McCarthy, *What Is Catfishing? A Brief (and Sordid) History*, WASH. POST (Jan. 9, 2016), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/01/09/what-is-catfishing-a-brief-and-sordid-history>.

4. *Id.*

5. *Id.*

6. See Brady & George, *supra* note 2.

died from leukemia.<sup>7</sup> The girlfriend, Lennay Kekua, was a twenty-two-year-old Stanford University student.<sup>8</sup> As Notre Dame continued its undefeated season, the media extensively covered Te'o's story of perseverance during this heartbreaking time.<sup>9</sup> But, Lennay Kekua was not dead because she did not exist.<sup>10</sup> Te'o soon discovered that he had been the victim of an elaborate hoax, perpetrated by a twenty-two-year-old mastermind named Ronaiah Tuiasosopo.<sup>11</sup> Tuiasosopo had used the photographs of a former classmate to create the persona of Lennay Kekua.<sup>12</sup> Tuiasosopo's elaborate scheme even went as far as orchestrating a phantom funeral to "kill" off Kekua.<sup>13</sup> Although the two had never met in person, Te'o had believed the relationship was authentic.<sup>14</sup> The Notre Dame linebacker's love for a woman who never existed sparked controversy, as fans were left with many unanswered questions.<sup>15</sup>

"Catfishing" has become a modern cultural phenomenon that has sparked public consciousness and legislative attention. Catfishing presents a challenging legal issue that state legislatures and courts have grappled with in recent years: whether a person can be held liable for impersonating another online.<sup>16</sup> While at least nine jurisdictions have enacted legislation against online impersonation generally,<sup>17</sup> Oklahoma is the first state to specifically codify the legal ramifications of catfishing.<sup>18</sup>

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7. *Id.*

8. Lateef Mungin & Steve Almasy, *Manti Te'o: A Linebacker, a Made-Up Girlfriend and a National Hoax*, CNN (Jan. 18, 2013, 11:28 AM), <http://www.cnn.com/2013/01/17/sport/manti-teo-controversy>.

9. *Id.*

10. *See id.*

11. *See Hoaxer Was in Love with Manti Te'o*, ESPN (Jan. 31, 2013), [http://www.espn.com/college-football/story/\\_/id/8900688/ronaiah-tuiasosopo-says-was-love-manti-teo](http://www.espn.com/college-football/story/_/id/8900688/ronaiah-tuiasosopo-says-was-love-manti-teo).

12. *Id.*

13. *Id.*; see also Timothy Burke & Jack Dickey, *Manti Te'o's Dead Girlfriend, the Most Heartbreaking and Inspirational Story of the College Football Season, Is a Hoax*, DEADSPIN (Jan. 16, 2013, 4:10 PM), <http://deadspin.com/manti-teos-dead-girlfriend-the-most-heartbreaking-an-5976517> (discussing the fabricated details of Kekua's funeral).

14. *See* Mungin & Almasy, *supra* note 8.

15. *Id.*

16. Victor Luckerson, *Can You Go to Jail for Impersonating Someone Online?*, TIME (Jan. 22, 2013), <http://business.time.com/2013/01/22/can-you-go-to-jail-for-impersonating-someone-online>.

17. The list of states to adopt online impersonation laws include California, New York, Texas, Louisiana, Hawaii, Mississippi, New Jersey, Washington, and Wyoming. CAL. PENAL CODE § 528.5 (West 2011); N.Y. PENAL LAW § 190.25(4) (McKinney 2008); TEX. PENAL CODE ANN. § 33.07(a)(1)(2) (2011); LA. STAT. ANN. § 14:73.10 (2012); HAW. REV. STAT. § 711-

This Note examines the recent enactment of Oklahoma's catfishing legislation and analyzes whether California's existing laws are sufficient to combat these instances of online impersonation, thereby eliminating the need to similarly adopt new statutes. Part II provides a background to the modern trend of catfishing, highlighting recent incidents that prompted legislative action in Oklahoma. Part III traces the development of online impersonation legislation in California. Part IV analyzes the existing statutes in California pertaining to online activity, which reveal that while catfishing is a modern phenomenon, existing online impersonation and privacy laws can nonetheless adequately address it. Therefore, Part V concludes that California does not need to adopt a similar civil statute specifically aimed at catfishing.

## II. BACKGROUND

The public discourse prompted by the Manti Te'o hoax was just the beginning of the catfishing phenomenon. Catfishing has since gained more attention and popularity after the release of MTV's documentary and TV show, "Catfish," causing more instances to arise.<sup>19</sup> Catfish perpetrators have become more elaborate by fabricating entire social circles to lure individuals into emotional relationships.<sup>20</sup> In one instance, two Indiana college students tricked their ex-roommate into "dating" a fictitious high school sophomore named "Ashley," who promised to meet the victim in person.<sup>21</sup> When the victim went to meet "Ashley," the two students were awaiting his

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1106.6 (2009); MISS. CODE ANN. § 97-45-33 (2011); N.J. STAT. ANN. § 2C:21-17 (West 2014); WASH. REV. CODE § 4.24.790 (2012); WYO. STAT. ANN. 6-3-902 (2011).

18. Catfishing Liability Act of 2016, H.B. 3024, 55th Leg., 2d Sess. (Okla. 2016); *see also* Silas Allen, *Catfishing Bill Would Give Oklahoma Victims Legal Recourse Against Online Scammers*, OKLAHOMAN (Jan. 25, 2016, 12:01 AM), <http://newsok.com/article/5474595> (explaining that the Catfishing Liability Act of 2016 would allow victims of catfishing to request an automatic injunction and monetary damages against the perpetrator).

19. Hayley Peterson, 'Catfishing: The Phenomenon of Internet Scammers Who Fabricate Online Identities and Entire Social Circles to Trick People into Romantic Relationships', DAILY MAIL (Jan. 17, 2013, 4:13 PM), <http://www.dailymail.co.uk/news/article-2264053/Catfishing-The-phenomenon-Internet-scammers-fabricate-online-identities-entire-social-circles-trick-people-romantic-relationships.html>.

20. *Id.*

21. Kashmir Hill, 'Catfishing' Gets Its First Legal Mention, FORBES (Apr. 23, 2013, 1:08 PM), <http://www.forbes.com/sites/kashmirhill/2013/04/26/catfishing-gets-its-first-legal-mention/#561e745650b8>.

arrival with a smartphone camera.<sup>22</sup> The perpetrators then posted the recording on YouTube, labeling the victim “a pedophile.”<sup>23</sup>

In yet another case, an individual with two different male aliases lured eight different women from Utah into an online relationship.<sup>24</sup> In reality, all eight women had been communicating with a twenty-four-year-old woman from Texas who had been using the photographs of two male students.<sup>25</sup> The continued popularity and success of the MTV show also illustrates this growing phenomenon. In a recent episode, a man believed he was committed to a six-year relationship with pop star, Katy Perry.<sup>26</sup> Despite how ridiculous and naïve many of these cases of catfishing may seem, the phenomenon nonetheless illustrates the growing trend and highlights the legal ramifications it poses. As the media continues to extensively cover catfishing, much of the attention is centered on whether liability can be imposed on a person who “catfishes” another.

#### *A. Catfishing Schemes Affect Multiple Actors*

Although a catfishing scheme concerns a fake persona, since the person depicted in the fabricated profile actually does not exist, the photographs and perhaps biographical information do depict a real person. As such, there are two victims in a catfishing scheme: the person who was deceived into the romantic relationship and the person whose photographs the perpetrator used. When we hear of a catfishing scheme where someone has fallen prey to another’s deception, we often think of the person who suffered the heart-breaking aftermath of the deception. However, this person is not actually who the law protects. Online impersonation laws provide legal recourse for the impersonated person rather than the deceived person.<sup>27</sup> The rationale is that online impersonation laws are aimed at protecting a person’s name and reputation and preventing harassment.<sup>28</sup>

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22. *Id.*

23. *Id.*

24. Jenna Koford, *BYU Women Victimized by ‘Catfish’ Relationship Deception*, DAILY UNIVERSE (Mar. 17, 2015), <http://universe.byu.edu/2015/03/17/beneath-the-surface-part-i>.

25. *Id.*

26. Jordana Ossad, *Here’s How (We Think) Katy Perry Reacted to That Unforgettable Catfish Episode*, MTV (Aug. 18, 2016), <http://www.mtv.com/news/2920835/katy-perry-catfish-spencer>.

27. *See, e.g.*, Catfishing Liability Act of 2016, H.B. 3024, 55th Leg., 2d Sess. (Okla. 2016).

28. *See* Luckerson, *supra* note 16.

As social media continues to transform the way people interact with one another, an individual's online persona becomes critically important. Family members, friends, acquaintances, potential romantic partners, and even employers often perceive a person for the first time through his or her online presence.<sup>29</sup> This first impression can be dramatically affected by the presence of these fake profiles. Often a person's identity and photographs are used to create profiles not only on social networking sites, like Facebook, but also on dating websites. While dating profiles are not disparaging in their very nature, given the modern landscape of online dating, these profiles can nonetheless harm one's reputation. These false dating profiles can be especially damaging when the impersonated individual is married.

Furthermore, these false profiles often contain offensive content, which viewers of the profile will attribute to the impersonated victim. As Aimee Gonzales, the victim in the 2010 documentary "Catfish" describes, "[i]t's almost worse than stealing someone's name. She actually stole my face. There's nothing more than your face that makes you who you are."<sup>30</sup> As Gonzales and other impersonated victims illustrate, catfishing has transformed into a cultural phenomenon, triggering a call among society for legislative action.

### *B. Catfishing Incidents Prompt Legislative Action in Oklahoma*

In 2016, Oklahoma became the first state in the nation to provide a direct remedy for impersonated victims.<sup>31</sup> Introduced by Representative John Paul Jordan, the Catfishing Liability Act imposes liability on "[a]ny person who knowingly uses another's name, voice, signature, photograph, or likeness through social media to create a false identity without such person's consent . . . for the purpose[s] of harming, intimidating, threatening or defrauding."<sup>32</sup> Effective since November 1, 2016, the statute allows the

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29. See Kori Clanton, *We Are Not Who We Pretend to Be: ODR Alternatives to Online Impersonation Statutes*, 16 CARDOZO J. CONFLICT RESOL. 323, 326 (2014).

30. Gina Piccalo, *Catfish's Photo Fraud Victim*, DAILY BEAST (Nov. 4, 2010, 3:38 PM), <http://www.thedailybeast.com/articles/2010/10/04/catfish-aimee-gonzales-speaks-out.html>.

31. Catfishing Liability Act of 2016, H.B. 3024, 55th Leg., 2d Sess. (Okla. 2016); see also Allen, *supra* note 18 (highlighting that the bill provides a "direct remedy for victims of catfishing").

32. Catfishing Liability Act of 2016, H.B. 3024, 55th Leg., 2d Sess. (Okla. 2016).

impersonated victim to request an automatic injunction against the perpetrator and monetary damages, including a \$500 minimum award.<sup>33</sup>

The Oklahoma statute was prompted by yet another catfishing incident, where an Oklahoma City woman used photos of a woman named Sara Peccia found on social media to create false profiles.<sup>34</sup> Representative Jordan stated that the Act, provided by House Bill 3024, was designed to give victims, like Peccia, some legal recourse where none exists now.<sup>35</sup> Jordan further noted that the statute was enacted because catfishing represents a legal gray area in Oklahoma, and judges would have little guidance on how to rule if these cases ever came up in court.<sup>36</sup>

### *C. Social Media Networks Are Immune from Liability*

Part of the ambiguity surrounding catfishing is due to the fact that social media networks cannot be held liable in most instances.<sup>37</sup> For the impersonated victim who discovers his or her photographs were used to perpetrate a catfishing scheme, the first instinct is to have the photos removed. However, often times, it can be difficult to identify and impose liability on an anonymous online perpetrator.<sup>38</sup> As such, many impersonated victims instead impose liability on the social media network(s) used to perpetrate the deception. However, these efforts are often futile.

While social networking sites, such as Facebook, Instagram, and Twitter, may at first glance appear to offer protection through their privacy settings, these sites have few incentives to protect the interests of individual users because these sites are legally protected from liability.<sup>39</sup> Section 230 of the Federal Communications Decency Act (CDA) provides, “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>40</sup> As

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33. *Id.*

34. Allen, *supra* note 18.

35. *Id.*

36. *Id.*

37. See Communications Decency Act (CDA) of 1996, 47 U.S.C. § 230 (2012).

38. See Clanton, *supra* note 29.

39. *Id.* at 327 (“Social media networks such as Facebook, have few incentives to protect the interests of individual users, largely because [of] ‘Section 230 of the Federal Communications Decency Act (CDA).’”).

40. *Id.*

such, when third-party users commit torts, the CDA grants immunity to social media networks.<sup>41</sup> However, it is critical to note that this Act does not provide complete immunity for interactive service providers (“ISPs”).<sup>42</sup> Section 230 specifically exempts intellectual property and right of publicity claims, an issue that will be later explored.<sup>43</sup>

The policy behind protecting ISPs is that Congress has recognized that the Internet is a powerful tool for open communication.<sup>44</sup> This open forum also has boundless potential for both good and evil. Thus, while social media immunity under the CDA might shield ISPs from liability, it also serves as a barrier to recovery for the impersonated victim.

For example, in *Carafano v. Metrosplash.com, Inc.*,<sup>45</sup> the Ninth Circuit held that Section 230 provided a safe harbor for an online dating service.<sup>46</sup> In *Carafano*, Star Trek actress Christianne Carafano brought action against Metrosplash.com for a false dating profile using her likeness created by a third party.<sup>47</sup> The fake dating profile contained photographs of the actress, her name, home address, and personal information.<sup>48</sup> The Ninth Circuit found that Section 230 immunized the online dating website because it was an interactive service provider, and the false profile was created by a third party.<sup>49</sup> The Ninth Circuit further noted that service providers have millions of users with a staggering amount of information.<sup>50</sup> Imposing liability on these providers would have an “obvious chilling effect” as it would be nearly impossible for them to screen each profile.<sup>51</sup>

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41. See Clanton, *supra* note 29, at 327; see also Dan Malachowski, Comment, “Username Jacking” in *Social Media: Should Celebrities and Brand Owners Recover from Social Networking Sites when Their Social Media Usernames Are Stolen?*, 60 DEPAUL L. REV. 223, 248 (2010) (“[S]ocial sites will be immune from many of the torts of their third-party users, including defamation and intentional infliction of emotional distress.”).

42. 47 U.S.C. § 230 (2012).

43. *Id.*

44. David E. Fink & Andreas Becker, *When Social Media Becomes Anti-Social: Application of the Communications Decency Act in the Wild*, 54-15 LAW. MONTHLY 24, 25 (2015).

45. 339 F.3d 1119 (9th Cir. 2003).

46. *Id.* at 1121.

47. *Id.* at 1122.

48. *Id.*

49. *Id.* at 1123.

50. *Id.* at 1124.

51. *Id.*



Similarly, in *Barnes v. Yahoo!, Inc.*,<sup>52</sup> the Ninth Circuit dismissed the plaintiff's claim against Yahoo! on the ground that Section 230 provided immunity for content posted by a third-party user.<sup>53</sup> There, the plaintiff's former boyfriend had created a false profile with the plaintiff's likeness that depicted nude photographs, contained personal information, and solicited men for sex.<sup>54</sup> Yahoo! failed to remove the false profile and nude photographs, relying on Section 230 immunity, which bars treating ISPs as publishers or speakers of the content.<sup>55</sup>

As these cases illustrate, seeking legal recourse against ISPs will rarely lead to favorable outcomes given the immunity provided by Section 230. Since efforts to seek redress from ISPs appear futile, the only viable option for an impersonated victim is to seek action against the individual perpetrator, assuming that person can be identified.

### III. NEW TRENDS IN ONLINE BEHAVIOR ESTABLISH LEGAL FOUNDATIONS FOR ONLINE IMPERSONATION LAWS IN CALIFORNIA

While the catfishing phenomenon appears to be a modern trend, it is actually an amalgamation of various trends stemming from online behavior. As social media continues to transform the way individuals interact with one another, traditional forms of identity theft, bullying, and revenge are now being perpetrated with greater ease. Catfishing necessarily entails online impersonation, but it often also involves online bullying and sometimes revenge porn, which is the unauthorized distribution of sexually explicit photographs. As such, the legal ramifications of catfishing are founded upon these various trends in online behavior.

#### *A. Cyberbullying*

The rise of cyberbullying is one instance in which society is urging legislative action in the wake of a new online trend. Since cyberspace fosters a forum for anonymity, the widespread accessibility to social media has pushed bullying beyond the confines

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52. 570 F.3d 1096 (9th Cir. 2009).

53. *Id.* at 1099.

54. *Id.*

55. *Id.* at 1099.

of the classroom.<sup>56</sup> The case of Megan Meier, a thirteen-year-old girl who committed suicide as a result of being cyberbullied,<sup>57</sup> publicizes the issue. In *United States v. Drew*,<sup>58</sup> a person claiming to be a teenage boy targeted Meier online.<sup>59</sup> The relationship began as a flirtatious exchange of messages but quickly developed into insulting attacks and tormenting, which evidently led to Meier's suicide.<sup>60</sup> It was later discovered that Drew, the mother of a teenage girl who believed Meier had spread rumors about her daughter, created the false profile.<sup>61</sup> In the tragic aftermath of Meier's death, Congress proposed House Bill 1966, the Megan Meier Cyberbullying Prevention Act, which would criminalize cyberbullying.<sup>62</sup> In relevant part, the Act provides, "whoever transmits . . . any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person using electronic means shall be fined or imprisoned."<sup>63</sup> While the Cyberbullying Act would have been the first act to specifically prosecute online bullying, the bill was never enacted.<sup>64</sup>

### *B. Revenge Porn*

The trend toward adopting new legislation aimed at specific online activities further continued with the emergence of revenge porn. Revenge porn is a term used for the distribution of nude or sexually explicit images, videos, or audio of a victim without his or her consent.<sup>65</sup> Individuals rely on the proliferation of social media and its anonymity to post sexually explicit content as a form of revenge.<sup>66</sup> In 2013, California became the first state to enact

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56. Atticus N. Wegman, *Cyberbullying and California's Response*, 47 U.S.F. L. REV. 737, 737 (2013).

57. *United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009).

58. *Id.*

59. *Id.* at 452.

60. *Id.*

61. *Id.*

62. Megan Meier Cyberbullying Prevention Act, H.R. 1966, 111th Cong. (2009).

63. *Id.*

64. See Wegman, *supra* note 56, at 749.

65. Zak Franklin, Comment, *Justice for Revenge Porn Victims: Legal Theories to Overcome Claims of Civil Immunity by Operators of Revenge Porn Websites*, 102 CALIF. L. REV. 1303, 1304 (2014).

66. *Id.*

legislation aimed at protecting revenge porn victims.<sup>67</sup> California Penal Code section 647 imposes liability on “[any] person who intentionally distributes the image of the intimate body part or parts of another identifiable person without authorization.”<sup>68</sup> Under this statute, a first-time violation is a misdemeanor that carries a penalty of a \$1,000 fine and up to six months in prison.<sup>69</sup>

California’s first revenge porn conviction came in 2014 in *People v. Iniguez*.<sup>70</sup> There, a thirty-six-year-old man was sentenced to one year in prison for creating a false Facebook profile using his ex-girlfriend’s likeness to post offensive comments and intimate photographs of his ex-girlfriend on her employer’s page.<sup>71</sup> In yet another landmark case, a San Diego man, Kevin Bollaert, was convicted and sentenced to eighteen years in prison for operating a revenge porn website called UGotPosted.com.<sup>72</sup> Generating more than \$30,000, UGotPosted.com not only featured nude photographs, but it also displayed identifying information of the victims.<sup>73</sup> Notably, however, Bollaert was charged under California’s existing identity theft statutes as the crime occurred before the enactment of the new revenge porn law.<sup>74</sup>

### C. Online Impersonation

Deeply rooted in identity theft legislation, online impersonation statutes emerged as a mechanism to regulate online behavior. The distinction between identity theft laws and impersonation laws is that the former often involve monetary motivations, whereas the latter

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67. Joyce E. Cutler, *Revenge Porn Operator Guilty in California Cyber-Exploitation Case*, BLOOMBERG NEWS (Feb. 9, 2015), <http://www.bna.com/revenge-porn-operator-n17179922877/>.

68. CAL. PENAL CODE § 647(j)(4)(A) (West 2016).

69. S.B. 255, 2013 Leg. (Cal. 2010).

70. No. 4CA05206 (Cal. Super. Ct. filed Nov. 3, 2014); *see also* Cutler, *supra* note 67 (“In fall 2014, a man was sentenced to a year in jail for posting nude photos of his ex-girlfriend on Facebook, marking the first successful conviction by the Los Angeles City Attorney under the revenge porn statute.”).

71. *People v. Iniguez*, No. 4CA05206 (Cal. Super. Ct. filed Nov. 3, 2014).

72. *See People v. Bollaert*, No. CD252338 (Cal. Super. Ct. filed Dec. 10, 2013).

73. *Id.* at 706.

74. California’s revenge porn law, Penal Code § 647, became effective October 2013, and Bollaert was charged in December 2013. The court determined that Bollaert violated Cal. Penal Code § 530.5, which covers identity theft, and Cal. Penal Code § 653m(b), which addresses online harassment. *People v. Bollaert*, No. CD252338 (Cal. Super. Ct. filed Dec. 10, 2013); *see also* Cutler, *supra* note 67 (“[O]ne of the interesting things about the Bollaert case is he was prosecuted under California’s existing felony identity theft and extortion laws, rather than the state’s new revenge porn law, a misdemeanor.”).

impose liability without any intent for monetary gain.<sup>75</sup> Since taking effect in January 1, 2011, California Penal Code section 528.5 imposes criminal liability on any person who engages in the online impersonation of another.<sup>76</sup> Advocated by Senator Joe Simitian, California's new online impersonation statute was intended to update the existing impersonation statute "that was written in 1872, without the modern technologies of today in mind."<sup>77</sup> Senator Simitian further noted that the current false impersonation statute would expand to include impersonation done through electronic means, such as email, Facebook, and other social media websites.<sup>78</sup> Under California Penal Code section 528.5, "any person who knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person" is guilty of a misdemeanor.<sup>79</sup> An impersonation is deemed "credible" if another person would reasonably believe or did reasonably believe the impersonation.<sup>80</sup> As such, unlike Section 530.5,<sup>81</sup> this statute does not require the intent to act with an unlawful purpose.

In *In re Rolando S.*,<sup>82</sup> the defendant was convicted of online impersonation under section 530.5 for gaining access to the victim's Facebook profile, altering her profile, and posting prurient messages purportedly as the victim.<sup>83</sup> Although the defendant evaded conviction under section 528.5 since his conduct occurred before the new statute was in effect, his conduct could have been punishable by section 528.5 had it occurred after its enactment.<sup>84</sup> In the footnotes of

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75. CAL. PENAL CODE § 528.5 (West 2011).

76. *Id.*

77. S.B. 1411, 2014 Leg. (Cal. 2010); Sen. Joseph Simitian, *Fact Sheet: Senate Bill 1411 (Simitian) Criminal "E-Personation"*, STATE SENATOR JOE SIMITIAN (Nov. 2, 2013), [http://www.sensorsimitian.com/images/uploads/SB\\_1411\\_Fact\\_Sheet.pdf](http://www.sensorsimitian.com/images/uploads/SB_1411_Fact_Sheet.pdf).

78. Sen. Joseph Simitian, *Fact Sheet: Senate Bill 1411 (Simitian) Criminal "E-Personation"*, STATE SENATOR JOE SIMITIAN (Nov. 2, 2013), [http://www.sensorsimitian.com/images/uploads/SB\\_1411\\_Fact\\_Sheet.pdf](http://www.sensorsimitian.com/images/uploads/SB_1411_Fact_Sheet.pdf).

79. CAL. PENAL CODE § 528.5(a) (West 2011).

80. CAL. PENAL CODE § 528.5(b) (West 2011).

81. California Penal Code § 530.5 provides, "Every person who willfully obtains personal identifying information . . . of another person, and uses that information for any unlawful purpose . . . is guilty of a public offense." *Id.* § 530.5.

82. 129 Cal. Rptr. 3d 49 (Ct. App. 2011).

83. *Id.* at 52.

84. *Id.*

that opinion, Judge Orndoff mentioned that a person could violate section 528.5 by merely posting comments on a blog impersonating another person.<sup>85</sup> Since a person can be liable under section 528.5 for merely obtaining another's personal information and using it to harm, intimidate, threaten, or defraud another in *any* way, online impersonation laws may be equipped to combat instances of catfishing.

#### IV. CALIFORNIA'S EXISTING LAWS CAN ADEQUATELY ADDRESS CATFISHING

As social media usage continues to grow exponentially and new trends exploit the anonymity of the Internet, some may argue that the law is falling behind technology. As such, legislation is aimed at searching for new ways to update existing laws to account for modern trends. The enactment of section 528.5, which imposes criminal liability, was one such instance. California was also quick to consider civil liability. In fact, a year before Oklahoma enacted its Anti-Catfishing Act, California had toyed with the idea of developing civil liability for online impersonation.<sup>86</sup> Introduced on February 25, 2015, Assembly Bill 695 would establish a private civil cause of action for any person who "knowingly and without consent credibly impersonates another person . . . on [the] internet . . . and intentionally induces another to believe the person is the impersonated person."<sup>87</sup> Although California had an existing criminal statute aimed at online impersonation,<sup>88</sup> this statute would have established a civil cause of action. While criminal liability had jail time as a potential punishment, civil liability would allow the impersonated victim to recover monetary damages. Additionally, civil liability would have a lower standard of proof, making recovery easier to obtain. However, the bill received no legislative action and eventually failed on February 1, 2016.<sup>89</sup>

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85. *Id.*

86. A.B. 695, 2015 Reg. Sess. (Cal. 2015).

87. *Id.*

88. CAL. PENAL CODE § 528.5 (West 2011).

89. California Assembly Bill 695 failed pursuant to Article IV, Section 10(c) of the Constitution, which provides that any bill introduced during the first year of the legislative session that does not pass by the second year shall not be enacted. A.B. 695, 2015 Reg. Sess. (Cal. 2015); CAL. CONST. art. IV, § 10(c).

Although it may seem as though California's failure to adopt a civil online impersonation law leaves victims without legal recourse, this is not the case. In fact, there is already a well-established body of law in California that prohibits the kind of behavior that statutes like the one in Oklahoma intend to deter. Therefore, victims whose identities were stolen in furtherance of a catfishing scheme can seek both criminal liability, through California's online impersonation law, and civil liability through invasion of privacy and publicity laws.

*A. Existing Online Impersonation Laws Are Broad Enough to Combat Instances of Catfishing*

Catfishing is yet another form of online impersonation. When a person engages in a catfishing scheme, he or she fabricates an online persona for the purpose of obtaining some sort of benefit, whether monetary or not. Because California has two criminal online impersonation laws, one requiring monetary gains and the other not, an impersonated victim could seek redress under either statute, depending on the online behavior at issue.

Many instances of catfishing involve perpetrators who not only steal hearts, but also money. For example, one Florida nurse was scammed into sending \$450,000 to her "boyfriend" for a business venture he promised would create a future for the two of them.<sup>90</sup> In more common examples, catfish scammers often entice victims into sending money for plane tickets so that the two can finally meet. In these cases, victims can impose liability under section 530.5, since the scammer has used the unauthorized false impersonation of another for an unlawful purpose. When the scammer does not receive any money from the impersonation or the victim cannot prove the scammer acted with an unlawful purpose, section 528.5 may be used to impose liability.

First, section 528.5 requires that the perpetrator impersonate "another actual person."<sup>91</sup> Some may argue this language is inapplicable to catfishing since the profile is fabricated and therefore does not impersonate an "actual" person. However, the statute is still applicable to catfishing since the person in the photographs is indeed

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90. 'Catfish' Victim Speaks Out, NBC (Feb. 15, 2013, 8:35 PM), <http://www.nbc.com/story/21222407/catfish-victim-speaks-out-about>.

91. CAL. PENAL CODE § 528.5(a).

a real person. If the primary objective of adopting online impersonation laws is to protect individuals from the exploitation of their identities, then such a statutory interpretation would completely turn the law on its head.

Under section 528.5, the impersonated victim could also readily establish that the impersonation was credible given that the deceived victim did reasonably believe the impersonation. Additionally, there would likely be other individuals who encounter the fake profile and believe the impersonation. Next, given that catfishing schemes necessarily involve the use of social media or other Internet platforms, the behavior would also fit within the “electronic means” requirement.<sup>92</sup> The victim would also have to establish that the impersonation was done for the purpose of “harming, intimidating, threatening, or defrauding.”<sup>93</sup> Although catfish perpetrators may not necessarily intend to intimidate or threaten another, there is usually an intent to defraud. The central objective of catfishing is to deceive another into thinking he or she is romantically involved with the person portrayed in the photographs. As such, the scammer may intend to defraud the victim or even to harm the victim emotionally. Because the statute does not specify that the harm must be financial, emotional harm may very well be sufficient. Furthermore, the impersonated victim arguably suffers a reputational harm, predominately since others are led to believe the posts were made by that person. As previously mentioned, if the posts are offensive in nature, the impersonated person would likely suffer reputational harm. Lastly, both the legislative history and the language of the statute merely require harm to “another person.”<sup>94</sup> As such, this element could be met by either type of victim: the impersonated person or the deceived person.

The legislative history of section 528.5 also suggests that the statute can be applicable to catfishing. It provides that the bill could perhaps impose liability on a person who “created a fictional character in an e-mail or on a website.”<sup>95</sup> While case law and the statute do not clearly provide whether the terms “defraud” and “harm” ought to be given narrow or broad interpretation, existing

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92. *Id.* § 528.5(c).

93. *Id.*

94. *Id.*; see also S.B. 1411, 2014 Leg. (Cal. 2010).

95. S.B. 1411, 2014 Leg. (Cal. 2010).

online impersonation laws could nonetheless be an appropriate avenue for catfish victims.

*B. Invasion of Privacy and Defamation Can Be Applied to Catfishing*

While California may impose criminal liability on catfishing, the impersonated victim may also wish to seek civil liability against the catfish perpetrator. Some may argue that California ought to adopt a civil statute similar to the one in Oklahoma to protect catfish victims. However, there is a robust body of privacy law that, though not specifically designed to target catfishing, is nonetheless applicable and available to catfishing victims. At common law, every individual has the right to privacy, or the right to be left alone.<sup>96</sup> This right to privacy has been categorized into four distinct torts,<sup>97</sup> two of which are applicable to catfishing.

1. Misappropriation of Name or Likeness

Common law misappropriation of name or likeness imposes civil liability on one who appropriates the name or likeness of another for his own use or benefit.<sup>98</sup> As such, a catfishing victim would need to establish: (1) that the defendant used the plaintiff's name, likeness, or identity, without the plaintiff's consent; (2) commercial *or other advantage to the defendant*; and (3) a resulting injury to the plaintiff.<sup>99</sup>

First, a catfish victim can establish lack of consent. Often times impersonated victims are unaware their photographs are being used in a catfishing scheme until someone else realizes the profile is fake. In fact, in several instances of catfishing, the impersonated person is shocked to find out his or her photographs were used.<sup>100</sup> For example, Aimee Gonzales, the catfish victim that sparked the revolution of the MTV show, first learned she was being impersonated when filmmakers approached her for the

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96. See *Melvin v. Reid*, 297 P. 91, 92 (Cal. Ct. App. 1931).

97. In a 1960 law review article, Dean Prosser identified four distinct invasion of privacy torts: (1) intrusion, (2) public disclosure of private facts, (3) false light in the public eye, and (4) misappropriation of name or likeness. William L. Prosser, *Privacy*, 48 CALIF. L. REV. 383, 389 (1960).

98. RESTATEMENT (SECOND) OF TORTS § 652(c) (AM. LAW INST. 1977).

99. See *Eastwood v. Super. Ct.*, 198 Cal. Rptr. 342, 347 (Ct. App. 1983) (emphasis added).

100. See Piccalo, *supra* note 30.



documentary.<sup>101</sup> The impersonated victim can also likely establish the first element since “identity” is broad enough to cover photographs. In fact, courts have held that the use of plaintiff’s “identity” is broad enough to extend to *any* use that invokes plaintiff’s identity.<sup>102</sup> Since photographs evidently invoke the victim’s identity, the scammer’s unauthorized use of such photographs is sufficient to constitute misappropriation.

Next, the victim must establish that the scammer used the photographs in furtherance of some advantage, whether pecuniary or not. To be actionable under the tort of misappropriation, the name or likeness need not be used for pecuniary gain; it is sufficient if the use is for the defendant’s “own advantage.”<sup>103</sup> As such, psychological motivations may fit within this language of “own advantage.” Although some instances of catfishing are for pecuniary gains, a majority of catfishing schemes are carried out for various psychological motivations.<sup>104</sup> Psychological motivations can vary widely from a desire to romantically engage with another person under the guise of a more “attractive” persona, to a desire to obtain revenge for a past wrong.<sup>105</sup> In either instance, the catfish victim can likely establish that the defendant used the photographs for his own advantage, whether that advantage is as innocent as romantic relations or as sinister as revenge.

Lastly, the common law tort of misappropriation requires the plaintiff to show he or she was injured as a result of the misappropriation.<sup>106</sup> In *Fairfield v. American Photocopy Equipment Company*,<sup>107</sup> the court held that mental anguish was sufficient to establish the plaintiff was injured.<sup>108</sup> The court noted that, “[i]n some torts the entire injury is to the peace, happiness, or feelings of the

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101. *Id.*

102. *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1397 (9th Cir. 1992) (emphasis added); *see also* *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1098–1100 (9th Cir. 1992) (permitting voice misappropriation claim).

103. *See* W. PAGE KEETON ET. AL., PROSSER AND KEETON ON TORTS § 117, at 853 (5th ed. 1984).

104. Rachel George, *Catfish Stars Share Insight into Manti Te'o Saga*, USA TODAY (Jan. 18, 2013, 5:37 PM), <http://www.usatoday.com/story/sports/ncaaf/2013/01/17/catfish-stars-nev-schulman-max-joseph-manti-teo-saga/1843155/>.

105. *Id.*

106. RESTATEMENT (SECOND) OF TORTS § 652(c) (AM. LAW INST. 1977).

107. 291 P.2d 194 (Cal. Ct. App. 1955).

108. *Id.* at 199 (“One whose right of privacy is unlawfully invaded is entitled to recover substantial damages, although the only damages suffered by him resulted from mental anguish.”).

plaintiff; in such cases no measure of damages can be prescribed . . .”<sup>109</sup> Therefore, the fact that damages cannot be measured monetarily is not a bar to recovery.<sup>110</sup> In the case of catfishing, the impersonated victim could establish injury to his or her peace of mind. A catfish victim could likely establish that the use of his or her personal photographs to engage in fabricated relationships had detrimental effects on the victim’s peace and happiness. Furthermore, if the photographs were used to further sexual advances aimed at another or to post offensive content, the victim likely suffered humiliation and reputational damage. Thus, the common law misappropriation tort is a legal avenue that is applicable to instances of catfishing and can be used to stop further impersonation.

## 2. False Light

A catfishing victim can also seek legal protection under a false light invasion of privacy claim. False light would be especially applicable in the case of Diane O’Meara, the young woman whose photographs were used in the Manti Te’o controversy. In California, an individual can sue for false light when highly offensive, false implications are made about him or her.<sup>111</sup> First, in order to prove false light, the plaintiff must establish that the defendant implied something false. For example, in *Gill v. Curtis*, the court held that publication of a married couple’s photograph constituted false light because it was accompanied by a caption that suggested their only interest in each other was sex.<sup>112</sup> Similarly, in *Solano v. Playgirl, Inc.*,<sup>113</sup> the court held that placing an actor’s photograph on the cover of Playgirl magazine in combination with the headlines, created a false implication that nude photographs of the actor would be found inside the issue.<sup>114</sup>

For example, in the case of O’Meara, she could likely establish her photographs were used to implicate that she had been involved in a tragic car accident and had died from leukemia, neither of which

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109. *Id.* (quoting *Goodyear Tire & Rubber Co. v. Vandergriff*, 184 S.E. 452, 454 (Ga. Ct. App. 1936)).

110. *Id.* at 198.

111. *Gill v. Curtis Publ’g Co.*, 239 P.2d 630, 630–32 (Cal. 1952).

112. *Id.* at 634.

113. 292 F.3d 1078 (9th Cir. 2002).

114. *Id.* at 1081.

are true. Furthermore, the Manti Te'o scandal was highly publicized and O'Meara's face and name were plastered across headlines. Before Te'o revealed that it was all a hoax, the media was reporting that Te'o's "girlfriend" had died.<sup>115</sup> O'Meara's photographs were used in these articles. Because O'Meara had neither been involved in a tragic accident nor died of leukemia, she could likely establish that the use of her photographs in connection with this hoax placed her in a false light.

Next, the plaintiff must establish that the false impression would be "offensive to a person of ordinary sensibilities."<sup>116</sup> For example, the sexual implications in both *Gill* and *Solano* would be offensive to a reasonable person given the harmful impacts on the victims' reputation. Similarly, the use of O'Meara's photographs in this manner would be offensive to a reasonable person. A reasonable person may find it offensive that the media was reporting he or she had died, when in fact, that was not the case.

In any event, one would find it offensive if his or her photographs were used to lure others into romantic relationships, especially when such schemes involved multiple victims and multiple fake profiles. It could be quite damaging to both the person's personal reputation among friends and family, as well as the person's professional reputation. The nature of the catfishing scheme and the factual circumstances would of course dictate whether the conduct would satisfy these requirements, but a false light claim could serve as a viable legal avenue.

Lastly, the false light element that would perhaps be the most difficult to establish in the catfishing context is publication. Courts in California have generally been unclear as to how many individuals must receive the information for it to constitute publication. In cases similar to O'Meara, publication would be easily satisfied as the false implications were made on various media outlets, reaching the public at large. However, publication might be an issue in ordinary catfishing scenarios where the perpetrator is only directly communicating with one person: the deceived victim. Nevertheless, case law suggests that publication to one person might be

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115. See Mungin & Almasy, *supra* note 8.

116. *Gill*, 239 P.2d at 634.

sufficient.<sup>117</sup> Because the California Supreme Court has noted that the false light claim is akin to a libel claim,<sup>118</sup> the publication requirement for false light could be analyzed in accordance with the publication requirements for libel. In an action for libel, a slanderous statement made to one person constitutes publication.<sup>119</sup> Therefore, if the publication threshold for a libel suit is applicable to a false light claim, the impersonated victim could establish publication even where publication was made to only one person.

### 3. Defamation

Given the similarities between a false light claim and a defamation claim, a victim of catfish impersonation may turn to defamation as an additional form of recovery. A defamatory statement is broadly defined as an unprivileged communication that exposes a person to “hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which can injure him in his occupation.”<sup>120</sup> The crux of a catfishing scheme is falsity, as the perpetrator necessarily invokes elaborate falsifications to further the so-called relationship. Given that personal photographs accompany the fake profile, any person viewing the profile would conclude that the defamatory communications originate from the pictured individual. Thus, the catfish victim whose photographs were used, often suffers inevitable reputational harm at the hands of the perpetrator.

For example, one girl discovered that someone had used her identity to harass the people closest to her in a vendetta to ruin her reputation.<sup>121</sup> The catfish perpetrator had created a false profile using all of the victim’s personal photographs and biographical information to send vulgar, offensive comments to students at the victim’s high school.<sup>122</sup> As the conflict spiraled out of control, the impersonated victim revealed that she “couldn’t even get people that [she] knew

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117. *Bowen v. M. Caratan, Inc.*, 142 F.Supp.3d 1007 (E.D. Cal. 2007) (holding that publication to a single individual is sufficient to satisfy the publication element of a defamation claim under California law).

118. *Briscoe v. Reader’s Digest Ass’n*, 483 P.2d 34, 44 (Cal. 1971).

119. *Cunningham v. Simpson*, 461 P.2d 39, 42 (Cal. 1969) (“The slander heard by one person is no less a slander than that heard by a multitude.”).

120. CAL. CIV. CODE § 45 (West 2016).

121. Jordana Ossad, *What Would You Do if a Catfish Was Pretending to Be You?*, MTV (July 15, 2015), <http://www.mtv.com/news/2214514/catfish-falesha-jacqueline/>.

122. *Id.*

personally to believe that it was a fake account . . .”<sup>123</sup> Because defamation law protects the interest of a person in his or her reputation,<sup>124</sup> and compensates not only for financial injury but also for mental anguish or emotional distress,<sup>125</sup> a defamation claim may be a suitable legal avenue.

Similar to a false light claim, a defamation claim also requires publication.<sup>126</sup> Publication may be in either written or oral form and constitutes any communication to a third party.<sup>127</sup> California only requires a single publication.<sup>128</sup> Furthermore, the California Court of Appeal has recognized the single publication rule in the context of Internet publications.<sup>129</sup> In a catfishing scheme, the perpetrator crafts various fabrications throughout the course of the “relationship,” which ultimately creates an entirely new life for the impersonated individual. Most of these details and statements are entirely false and do not actually depict the real person whose photographs were used to facilitate the scheme. The other victim, the one who is fraudulently led to believe these fabrications, would be deemed the third party who receives the communication. This single third party would be sufficient to establish publication in California. Moreover, many instances of catfishing involve several duped individuals, such as those Indiana women mentioned earlier; therefore, publication likely reaches several third parties.

Since most instances of catfishing involve ordinary individuals whose photographs were used without consent, the standard for proving intent would merely be negligence.<sup>130</sup> Based on this negligence standard, it is no defense that the publication was unintentional so long as the defendant acted negligently in making a false statement.<sup>131</sup> As evidenced by the countless incidents of catfishing, the perpetrators begin the online relationships with full awareness that the stories they tell, in conjunction with the images

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123. *Id.*

124. *Fairfield v. Am. Photocopy Equip. Co.*, 291 P.2d 194, 197 (Cal. Ct. App. 1955).

125. *Id.* at 199.

126. *Bowen v. M. Caratan, Inc.*, 142 F.Supp.3d 1007 (E.D. Cal. 2007).

127. *See Cunningham v. Simpson*, 461 P.2d 39, 42 (Cal. 1969).

128. *Traditional Cat Ass’n v. Gilbreath*, 13 Cal. Rptr. 3d 353, 360 (Ct. App. 2004); *see also Bowen*, 142 F.Supp.3d at 1007 (holding that publication to a single individual is sufficient to satisfy the publication element of a defamation claim under California law).

129. *Traditional Cat Ass’n*, 13 Cal. Rptr. 3d at 360–61.

130. *RESTATEMENT (SECOND) OF TORTS* § 577 (AM. LAW INST. 1976).

131. *Id.*

they use, are complete fabrications. After all, a few online fibs do not simply escalate into a full-blown hoax without at least some negligence at the hands of the catfish perpetrator.

Lastly, the plaintiff would need to establish damages.<sup>132</sup> California case law establishes that when a statement is defamatory on its face, without the need to explain the defamatory nature, then the plaintiff need not establish special damages.<sup>133</sup> Depending on the nature of the catfishing scheme, many of the statements made to a third party may be defamatory on their face. For example, the Te'o scandal involved several communications that would be defamatory to any reasonable person, such as suggesting Ms. O'Meara had tragically died when she was in fact still alive.

In another unique case, a young woman named Jackie created a catfish for herself in a bizarre bid to earn the affections of a young man she was romantically interested in, who had previously rebuffed her advances.<sup>134</sup> Jackie hoped this false profile would catch the young man's attention.<sup>135</sup> The circumstances took a strange turn when Jackie falsely claimed she had been the victim of a sex crime when her "suitor" forced her into gang rape.<sup>136</sup> In creating this fictitious suitor, Jackie had used the photographs of a former classmate.<sup>137</sup> This former classmate, who had no knowledge or involvement in the scheme, was now labeled as a rapist.<sup>138</sup> These catfishing instances are prime examples of statements that were defamatory on their face, and as such, would be sufficient to establish damages.

#### *D. Application of California's Statutory Right of Publicity to Catfishing*

In addition to the common law right of publicity, California also has a statutory right of publicity.<sup>139</sup> However, its application may be much more limited in scope. In the last several decades, California

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132. See *Bowen*, 142 F.Supp.3d at 1007.

133. See, e.g., *Correia v. Santos*, 13 Cal. Rptr. 132 (Ct. App. 1961).

134. T. Rees Shapiro, 'Catfishing' Over Love Interest Might Have Spurred U-Va Gang Rape Debacle, WASH. POST (Jan. 8, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/01/08/catfishing-over-love-interest-might-have-spurred-u-va-gang-rape-debacle>.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. CAL. CIV. CODE § 3344(a) (West 2016).

courts have expanded the scope of the common-law right of publicity, such that it now touches a broader range of issues than the statutory right of publicity.<sup>140</sup> Therefore, while a victim of catfish impersonation may have a viable claim under the common law, the statutory right of publicity may be a challenge.

First, similar to the common law, the statutory right of publicity does not require that the identity-holder be a celebrity or have a commercially valuable identity.<sup>141</sup> In fact, the statute was intended to protect the rights of ordinary individuals.<sup>142</sup> As such, the impersonated victim need not be a celebrity nor prove his or her identity has commercial value to recover damages. However, while the identity does not necessarily need to have commercial value, the identity-holder may nonetheless have to prove the use was commercial in nature. The statutory right of publicity requires the “knowing” unauthorized use of a person’s name or likeness “on or in products, merchandise or goods for the purpose of advertising or selling, or soliciting purchases . . .”<sup>143</sup> Based on this statutory language, it may seem as though a catfish victim could only prevail if the perpetrator used the identity for some commercial purpose, such as advertising. This may be an issue, as most instances of catfishing do not involve the use of the identity for commercial exploitation. In fact, the use of the identity is often for non-commercial purposes, such as to gain the affections of another. Therefore, unless the impersonated victim’s photographs were used for commercial purposes, a claim under the statutory right of publicity may be challenging.

At the same time, despite this statutory language, California courts have found that use of a person’s identity that is not purely commercial in nature is nonetheless a violation of the right of publicity.<sup>144</sup> While California’s statutory language does not expressly apply to online impersonations in the context of catfishing, case law suggests that noncommercial speech may be sufficient.<sup>145</sup>

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140. See Andrew M. Jung, *Twittering Away the Right of Publicity: Personality Rights and Celebrity Impersonation on Social Networking Sites*, 86 CHI.-KENT L. REV. 381, 410 (2011).

141. *KNB Enters. v. Matthews*, 92 Cal. Rptr. 2d 713, 717 (Ct. App. 2000).

142. See A.B. 826, 1971 Reg. Sess. (Cal. 1971).

143. CAL. CIV. CODE § 3344(a) (West 2016).

144. *Comedy III Prods., Inc. v. Gary Saderup, Inc.*, 21 P.3d 797, 803 (Cal. 2001).

145. *Id.*

Furthermore, California's statutory right of publicity is also an appealing claim because the impersonated victim can impose liability on ISPs, whereas they could not otherwise. As previously mentioned, the CDA, which excludes ISPs from liability, does not apply to intellectual property.<sup>146</sup> The statutory right of publicity has been classified as an intellectual property right,<sup>147</sup> therefore the CDA would not be applicable. As such, a catfish victim seeking redress under the statutory right of publicity may impose liability on the ISPs since they would not be protected by the CDA.

Therefore, because the CDA does not apply to the right of publicity and the victim need not be a celebrity or have commercial value in his or her identity, the statutory right of publicity may cover instances of catfishing, depending on the nature of the use. Although many instances of catfishing may not necessarily invoke commercial use, thereby perhaps restricting the application of the statutory right of publicity, catfishing may expand outside the scope of romantic relationships. Commercial exploitation may be the next stop on the ongoing saga of catfishing, and California's right of publicity may prove to be a viable and less burdensome legal theory for catfish victims.

## V. CONCLUSION

The relatively new cyber-scam of catfishing has left society, and even the legal field, perplexed as to legislative remedies. Perceived as a legal gray area, one may advocate that catfishing is a modern phenomenon that has not yet been addressed and that the unique nature of catfishing warrants specific legislation. While it is true that impersonation on the Internet is a relatively new phenomenon, offline impersonation has existed for decades. Enacting a new statute with each emerging trend may seem necessary in theory given the ramifications of such trends. However, many of these new trends are merely slight variations or culminations of various online activities, many of which are already addressed under the law. Online catfishing is simply the unauthorized use of another's identity, a phenomenon that has been legally protected against for over a century. The fact that a catfishing scheme occurs online does not

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146. Communications Decency Act (CDA) of 1996, 47 U.S.C. § 230 (2012).

147. *Alterra Excess & Surplus Ins. Co. v. Snyder*, 184 Cal. Rptr. 3d 831, 841 (Ct. App. 2015).



change the nature of this right nor does it render existing legal theories ineffective.

Furthermore, technology advances at a much greater speed than the law. Expecting the adoption of new statutes for each emerging trend would not only lead to a plethora of statutes causing confusion, but it would also run the risk of these statutes quickly becoming obsolete. Adding layers to existing laws that are broad enough to cover catfishing may lead to overlapping laws that cause confusion in the general public and most importantly, for those persons charged with enforcing such laws. It is without a doubt that new trends will continue to surface, taking catfishing to another level, but the law need not be amended with every emerging trend.

Therefore, while at first glance California's failure to enact a specific catfishing statute similar to Oklahoma's may seem to leave catfish victims without adequate redress, this note has demonstrated that existing legal theories are sufficient to provide catfish victims with remedies. California victims have an abundance of privacy and publicity laws that are broad enough to cover instances of catfishing. The dark side of the social media revolution will inevitably uncover more trends that may spark attention. But rather than seeking legislative amendments each time a new cyber trend emerges, we ought to pause and examine the effectiveness of applying existing legal measures.